IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 4920 of 1998

For Approval and Signature:

HONOURABLE MR.JUSTICE K.A.PUJ

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?
2	To be referred to the Reporter or not ?
3	Whether their Lordships wish to see the fair copy of the judgment ?
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
5	Whether it is to be circulated to the civil judge ?

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STATE OF GUJARAT - Petitioner(s)
Versus
BAI JADAVBEN, WD/O KESURBHAI JIJIBHAI - Respondent(s)

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Appearance :
MR KT DAVE, AGP for Petitioner(s) : 1,
MR JITENDRA M PATEL for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE K.A.PUJ

Date : 31/07/2006

ORAL JUDGMENT

1. The petitioner, State of Gujarat, has filed this petition under Article 226 of the Constitution of India challenging the order passed by the Gujarat Revenue Tribunal on 26.11.1990 in Revision Application No.TEN.B.A.265 of 1987. The petitioner has also sought for stay against the operation, implementation and execution of the order of Tribunal in this petition.

2. Since the order of the Tribunal was passed on 26.11.1990 and the present petition was filed on 19.6.1998 i.e after about 8 years, this Court initially adjourned the matter on 30.6.1998 so as to enable the petitioner to file affidavit explaining the delay. Accordingly, an affidavit of Mr.A.S.Gamit – Under Secretary, Revenue Department, Sachivalaya, Gandhinagar was filed on 20.7.1998. Considering the said affidavit,

petition was admitted and rule was issued on 30.7.1998 and ad-interim relief was granted in terms of para-9(c) of the petition.

3. It is the case of the petitioner that the respondents were served with the notice under Section 20 of the Gujarat Agricultural Land Ceiling Act, 1960. Mamlatdar and ALT has passed an order on 31.12.1983 holding that the Respondent was not holding any surplus land. The said order was taken in suo motu revision and the Dy. Collector, Bharuch by order dated 18.02.1984 confirmed the order of Mamlatdar. Subsequent to this, application of the residents of the same village was made by one Sanabhai Gokalbhai and Rudabhai Dhulabhai before the Dy. Collector of Bharuch on 01.09.1986 stating that respondents have excess land and by producing false certificate the respondent escaped from the provision of the Ceiling Act and thereby cheated the State Government. The said

application was investigated and ultimately allegations made were found true and, therefore, appeal was filed and after hearing both the parties Dy. Collector, Bharuch on 9.3.1987 decided the said appeal and held that the respondents were holding excess land to the extent of 14 acres and 26 gunthas and, hence further procedure was to be followed by the Mamlatdar and Krushipanch.

4. Being aggrieved by the said order of the Dy. Collector, Revision application was filed by the respondent before the Gujarat Revenue Tribunal and the Tribunal vide its order dated 26.11.1990 allowed the said application and held inter alia that the appeal filed by the State before the Dy. Collector was not maintainable.

5. It is this order which is under challenge in the present petition. Mr. K.T.Dave, learned AGP appearing for the State has submitted

that it is true that the petition was filed after a period of about 8 years. Mr. A.S. Gamit – Under Secretary, has filed affidavit explaining the delay. He has submitted that the impugned judgment and order of the Tribunal is delivered on 26.11.1990. The office of Collector, Bharuch made a proposal to the Commissioner of Land Revenue on 16.8.1991 to prefer Special Civil Application before this Court against the said judgment and order of the Tribunal. The Commissioner, Land Revenue, after scrutinizing the case made a detailed proposal on 16.9.1991 for filing Special Civil Application. The 'Chh' Branch of the Revenue Department sanctioned the proposal for filing the said application. It is further submitted that in the said Branch “Chh” approximately 700 cases had come up with such proposal of filing of the Special Civil Application. These proposals for filing Special Civil Application before this Court were made during the period from

1991 to November 1995. The concerned Section Officer, who was responsible and entrusted with the task of examining the impugned orders and placing the papers to the higher authorities to get the proposal approved did nothing for a long period and, therefore, almost all those matters remained pending at this stage in the “Chh” branch. It is further stated that on having come to know about the pendency of huge number of cases at the level of the said Section Officer, the Government issued charge-sheet dated 31.5.1997 to him. At the same time the Dy. Secretary as well as the Jt. Secretary being supervising authority did not perform their duty properly and hence the Government has issued charge-sheet to them as well, for the said irresponsible and negligent act on 27.10.1997.

6. Mr. K.T. Dave has further taken the Court through the said affidavit and explained the

delay aspect. It is, therefore, submitted that the delay is required to be condoned especially when just to escape from the clutches of the provisions of the Act, the birth date in the school register was changed and birth date 21.07.1959 pertaining to Jayantibhai who expired and was the second son of the respondent was projected as the birth date of Natvarbhai. He has further submitted that from the records, it transpired that the Certificate of birth date produced was of Shri Natvarbhai Kesurbhai and school record was tempered with. He has, therefore, submitted that since Mamlatdar's order was based on false and fabricated document and since the Tribunal has not properly appreciated this vital issue, the petition may not be thrown on the ground of delay and it may be decided and allowed on merits.

7. Mr. J.M. Patel, learned advocate appearing

for the respondent on the other hand strongly opposed the petition both on the ground of delay as well as on merits. As far as delay is concerned, he has taken the Court through the affidavit filed by the respondent. He has submitted that the present petition is filed by the Government after a period of about 8 years. This unreasonable period cannot be condoned on any ground either of facts or law. He has submitted that the Government is duly assisted by the highly qualified officers and competent staff to look after the affairs of the Government. They cannot plead against the citizen that the Officers were negligent or they have not properly discharged their duties and they cannot raise usual ground for condonation of delay in each and every matter. It is further submitted that since there is inordinate delay in filing the present petition this Court should not exercise its extra-ordinary jurisdiction under Article-226

of the Constitution of India. It is further submitted that the delay is very gross and inordinate which cannot be condoned on any count. In support of his submission, he relied on judgment of this Court in the case of **Civil Application No.6481 of 1998 decided on 19.8.1998** as well as the judgment of this Court in the case of **State of Gujarat & Anr. vs. Urban Land Tribunal & Ors., reported in 1998(1) GCD 237** and also the Hon'ble Supreme Court's decision in the case of **P.K.Ramchandran vs. State of Kerala and Anr., reported in AIR 1998 Supreme Court 2276**. Based on these judgments he urged that the delay of about 8 years should not be condoned on any count.

8. Mr. Patel has submitted that even the merits of the matter cannot persuade the Court to condone the delay and to take different view in the matter. In the present case, on the date of coming into force of the Act on

1.4.1976, the respondent was holding 53 Acres and 26 Guntha of land at Village Verchha, District – Bharuch. In respondent's family, there were six members on 1.4.1976. They are as under :-

Jadavben wd/o Kesurbhai J. Patel.

Madhuben Kesurbhai Patel.

Natvarbhai Kesurbhai Patel.

Thakorbhai Kesurbhai Patel.

Jayaben Kesurbhai Patel.

Lallubhai Kesurbhai Patel.

In view of the constitution of family on 1.4.1976, the respondent is entitled to get benefit of Section 6(3B) of the Act as in the respondent's family, there are more than 5 members including three minor sons (If Natvarbhai is considered to be minor). In view of that, the respondent is entitled to get 3/5 the land more than of ceiling unit i.e. 39 Acres. Therefore, even without going into controversy raised in the petition the petitioner is entitled to succeed on this

ground alone as the respondent is entitled to get 3/5 more land than ceiling unit. 3/5 of the ceiling unit of 39 Acres would come to about 23 Acres of land, therefore, 39 + 23 = 62 Acres. The respondent is, therefore, entitled to hold 62 Acres of land and in fact she was holding only 53 Acres and 26 Gunthas of land. Thus, no further facts are required to be investigated and in view of that, on this submission alone, petition filed by the Government is required to be dismissed.

9. Mr. Patel has further submitted that the Mamltadar and ALT, Amod by his judgment and order dated 31.12.1983 held that the respondent was not holding any surplus land as the respondent was entitled to hold 2 units of the land i.e. 78 Acres of the land as in the respondent family her son Natvarbhai was major on 1.4.1976 and under the provision of Section 6(3B) of the Act, a major son is also entitled to get one unit

for himself. This order of the mamlatdar dated 31.12.1983 was taken into suo motu revision by the Dy. Collector who had after examining entire record and proceedings of the case, confirmed the order of the Mamlatdar and ALT dated 31.12.1983, by his order dated 18.2.1984. This order was also referred to by the Gujarat Revenue Tribunal. In view of the fact that the Dy. Collector has himself exercised his suo motu revisional jurisdiction conferred on him under Section 37 of the Act and he by his order dated 18.2.1984 confirmed the judgment and order of the Mamlatdar dated 31.12.1983, the appeal, filed by the State Government, before the Dy. Collector in the year 1987 is not competent and yet the Dy. Collector who has again heard the appeal and vide his order dated 9.3.1987 set aside the order of the Mamlatdar and ALT and further held that, respondent is holding 14 Acres and 26 Gunthas of lands as surplus land. Once, the Dy. Collector has exercised

his suo motu jurisdiction conferred under Section-37 of the Act and as he has exercised the power of the Collector, he has no authority or jurisdiction to exercise his appellate jurisdiction under Section 35 of the Act and to hold otherwise than what he has already held earlier by exercising suo motu jurisdiction under Section 37 of the Act. This action of the Dy. Collector is amounting to review of his own order and under the Act no such power of review has been conferred on the Collector to review his own order. In absence of any power of review, power exercised by the Collector in the year 1987 in Ceiling Appeal No.4 of 1987 is totally in excess of his jurisdiction and authority. The Tribunal has, after examining record and proceedings of the case, rightly held that the Dt. Collector has no jurisdiction to pass the order in Appeal No.4 of 1987.

10.Mr. Patel has further submitted that birth date of the respondent's son Natvarbhai is 17.7.1957. The said date was mentioned in the school certificate and it was not corrected or erased as alleged by some five persons who had grievance against the respondent in the present dispute between the parties. They have made false and incorrect application to the Collector to the effect that the respondent has not correctly shown birth date of her son Natvarbhai. The inquiry on the basis of the said application was held by the Mamlatdar behind the back of the respondent and he has not given any opportunity to the respondent to have her say in the matter. However, it was found on record and urged before the Court that those five persons, who have alleged to have filed false application, out of them three complainants have mentioned in their reply that they were illiterate and could not sign. Remaining two persons have stated that

signatures on the complaint were not their signatures. Thus, on the admission of the complainants themselves it was clearly transpired that the said application was false and concocted. The observations of the Dy. Collector regarding eraser in the certificate are also not legal and proper as for that purpose also, no legal and proper inquiry was held nor any opportunity was given in the matter. The allegations regarding change of birth date are not proved according to law and in fact, there is no substance in the allegations levelled against the respondent regarding change of birth date in the school register.

11. Mr. Patel has further submitted that the appeal was filed by the State before the Dy. Collector after a period of about four years from the date of the order of Mamlatdar dated 31.12.1983. Thus, appeal filed by the State Government before the Dy. Collector under

Section 35 of the Act is barred by limitation. Period of 60 days has been prescribed for filing appeal or revision under the Act by Section 39 of the Act. Not only that, the State Government has also not filed the application for condonation of delay and no prayer was made to condone the delay. In absence of any application for condonation of delay and in absence of prayer for condonation of delay, the Dy. Collector erred in exercising his appellate jurisdiction after a period of about four years. Thus, appeal filed by the State Government before the Dy. Collector was required to be dismissed on the ground of limitation.

12. After having heard Mr.K.T.Dave, learned AGP for the State and Mr.J.M.Patel, learned advocate appearing for the respondent and after having gone through the order of Mamlatdar, Dy. Collector and Gujarat Revenue

Tribunal as well as after taking into consideration the averments made and facts stated in the petition, affidavit of Mr. Gamit explaining the delay and also affidavit filed on behalf of the respondent, the Court is of the view that the order passed by the Gujarat Revenue Tribunal does not require any interference by this Court while exercising its extraordinary writ jurisdiction under Article 226 of the Constitution of India.

13. The present petition is filed on 24.6.1998 challenging the order of Tribunal dated 26.11.1990. The delay is of about 8 years which cannot be considered to be a reasonable one. Even the affidavit filed in support of this petition does not satisfactorily explain the delay of 8 years. Mr.Dave is not in a position to convince the Court or to inspire its confidence for taking the lenient view in the matter. The Court has not found any good or sufficient reason for condonation of gross

and inordinate delay of 8 years. This Court, in the case of **State of Gujarat & Anr. vs. Urban Land Tribunal & Ors. (Supra)** has held that the unexplained delay on the part of the petitioner coupled with the creation of third party rights in the meanwhile is an important factor which would weigh with the Court in deciding whether or not to exercise such jurisdiction. The Hon'ble Supreme Court in the case **of P.K. Ramchandran V/s. State of Kerala and another (Supra)** has held that the law of limitation may harshly affect a particular party but it has to be applied with all its rigour when the statute so prescribe and the Courts have no power to extend the period of limitation on equitable ground. The Court is, therefore, of the view that petition deserves to be dismissed only on the ground of delay.

14. Even otherwise the Tribunal has rightly decided the Revision Application in favour of

the respondent and interference of this Court is not called for. The order of Dy. Collector declaring certain lands as surplus and disbelieving that Natvarbhai was major on 1.4.1976 was not just and proper. The order dated 18.2.1984 confirming the order of Mamlatdar clearly mentions that on due verification, the judgment of the Mamlatdar, in Jadavben's case, inter alia other cases was found to be legal and proper and, therefore, the case papers were returned by him. Despite the order of Dy. Collector in suo motu revision dated 18.2.1984, the appeal was filed to the Dy. Collector, Bharuch on the basis of some false application by some disgruntled persons about the correct date of birth in the year 1987. The Dy. Collector has no jurisdiction to entertain the said appeal once the matter was taken up in suo motu revision and the Mamlatdar's order was confirmed by the Dy. Collector. Another Dy. Collector cannot pass a judgment in appeal

subsequently, he being the authority of the same rank. The State has exhausted its remedy by taking the order of the Mamlatdar, in suo motu revision under Section 37 and, therefore, no further remedy by way of appeal would lie. The judgment of the Mamlatdar dated 31.12.1983 was challenged by way of appeal in the year 1987 and thus the same was barred by limitation. The investigation done by the Dy. Mamlatdar and the Mamlatdar and produced before the Dy. Collector in appeal was entirely at the back of the landholder or her son and thus they had no opportunity to cross-examine the complainant or applicants nor had they any opportunity to put their evidence in defence. Hence, rules of natural justice were not complied with and the order of the Dy. Collector was found to be incompetent, illegal, improper and it was rightly set aside by the Tribunal.

15.Mr. Patel's submissions on the issue of

Section-6(3B) of the Act and reliance placed by him on the decision of the Hon'ble Supreme Court in the case of **State of Gujarat vs. Jat Laxmanji Talasji, reported in AIR 1988 Supreme Court 825** are, however, of not much assistance to the respondent as in that case it is held that “computation of the extent of the additional land which the land holder was entitled to hold in excess of the prescribed ceiling in the context of S. 6 (3-B) must be made by applying the formula embodied in S. 6 (3-B) viz. that excess of the Ceiling area to the extent of “one fifth of the Ceiling area for each member in excess of five” subject to the rider that the total area does not exceed twice the ceiling area. On a true interpretation of the provision “each member in excess of five” must of logical necessity mean each “such” member of the specified handicapped category. In the instant case, there were 8 members in the family and it comprised of three members of the specified

category viz., 3 minor sons. Under the circumstances for each minor son in excess of the five members the holder was entitled to 1/5th of the ceiling area in excess of the prescribed ceiling. That is to say he was entitled to 3/5th of the prescribed ceiling over and above the ceiling area subject to the rider that the total retainable holding of the family did not exceed twice the ceiling area".

Here in the present case, there were six members in the family and it comprised of three members of the specified category viz, 3 minor sons. Hence for each minor son in excess of the five members the holder was entitled to 1/5th of the Ceiling area in excess of the prescribed ceiling. There is only one minor in excess of the five members and hence the holder is entitled to 1/5th of the ceiling area in excess of the prescribed ceiling. If one makes the computation on this basis having regard to the fact that

ceiling area is 39 acres, the family would be entitled to additional 7.8 acres (39/5 = 7.8 X 1 = 7.8) Thus, the respondent would be entitled to hold 46.8 Acres.

16. The above aspect has, however, been not gone into by the authorities below and hence the Court does not rest its decision on it, more particularly when the order of the Tribunal is confirmed on other grounds.

17. Considering all these issues on merits coupled with the gross and inordinate delay, the Court is not inclined to interfere in the order passed by the Gujarat Revenue Tribunal. The petition is, accordingly, dismissed. Rule is discharged without any order as to costs.

(K. A. PUJ, J.)

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